

1 THE HONORABLE ROBERT S. LASNIK

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6 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE
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9 TOMMY BROWN, on his own behalf and on
10 behalf of other similarly situated persons,

11 Plaintiff,

12 v.

13 TRANSWORLD SYSTEMS, INC., *et al.*,

14 Defendants.
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Case No.: No. 2:20-cv-00680-RSL

PLAINTIFF'S COMBINED MOTION TO
REMAND, OPPOSITION TO
DEFENDANTS' MOTION TO AMEND
NOTICE OF REMOVAL (ECF. 59), AND
MOTION FOR AN ORDER REQUIRING
THE NCSLT DEFENDANTS' ATTORNEYS
TO SHOW AUTHORITY TO REPRESENT
THE NCSLT DEFENDANTS

NOTE ON MOTION CALENDAR:

October 16, 2020

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19 Plaintiff Tommy Brown ("Brown"), by his undersigned attorneys, respectfully submits
20 this motion under 28 U.S.C. § 1447(c), and moves the Court to remand, all or part of, this action
21 to the Superior Court of the State of Washington in and for the County of King.¹

22 Because certain other issues have arisen in these and other recent proceedings and public
23 actions involving the Defendants around the country which relate to the issue of whether this
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26 ¹ While Plaintiff has no concerns having his claims adjudicated in this Court, neither he nor the
Defendants may confer on this Court subject matter jurisdiction by consent or inaction. Brown brings this
combined motion and opposition now at this early stage to avoid any later, collateral challenges and to save time
and resources for the Court and the Parties.

1 action was properly removed to and should remain in this Court, Brown also in this paper (i)
2 opposes Defendants' Motion to Amend Notice of Removal (ECF 59) and (ii) moves for an Order
3 of the Court requiring counsel for the NCSLT Trust Defendants² at Perkins Coie, including
4 Kristine E. Kruger and Thomas N. Abbott, "to produce or prove the authority under which he or
5 she appears" pursuant to Wash. Rev. Code Ann. § 2.44.030.

6 As explained in the accompanying memorandum in support of this combined motion and
7 opposition, Defendants have failed to carry its burden establishing that this Court has subject
8 matter jurisdiction under either basis stated in its original Notice of Removal: (i) 28 U.S.C. § 1331
9 (federal question jurisdiction)(ECF. 1 at ¶¶ 9-10), (ii) 28 U.S.C. § 1332(a)(general diversity
10 jurisdiction)(ECF. 1 at ¶¶ 11-19), or (iii) the Class Action Fairness Act, 28 U.S.C. §§ 1332(d),
11 1453 ("CAFA")(ECF. 1 at ¶¶ 20-34).

12 The Defendants effort to convert state law claims into federal question jurisdiction has
13 been repeatedly rejected by the Courts. The claims of diversity jurisdiction rests on improperly
14 aggregating the claims of the plaintiff and class members to meet the jurisdictional amount
15 required for diversity jurisdiction. Finally, the assertion that jurisdiction can be established under
16 CAFA also cannot be sustained.

17 Aware of these defects, the Defendants have untimely sought to amend their Notice of
18 Removal to add purported jurisdictional facts that were known to them at the time of removal but
19 concealed from the Plaintiff and the Court for 128 days. ECF. 59-1. More importantly, the
20 amendment sought does not cure the defects in the removal since the Defendants fail to disclose
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26 ² These Defendants include National Collegiate Student Loan Trust 2004-1, National Collegiate Student
Loan Trust 2004-2, National Collegiate Student Loan Trust 2005-1, National Collegiate Student Loan Trust 2005-
2, National Collegiate Student Loan Trust 2005-3, National Collegiate Student Loan Trust 2006-1, National
Collegiate Student Loan Trust 2006-2, National Collegiate Student Loan Trust 2007-1, and National Collegiate
Student Loan Trust 2007-2 ("NCSLT Trusts")

1 to the Court, the plaintiff and the public the identifies of all persons who have an interest in this
2 litigation including two beneficial owners of the NCSLT Trusts saying nothing more than there
3 are “two individual members...who is a foreign citizen who is not a citizen of the United States
4 or the State of Washington. ECF. 59-1 at ¶ 19(b). By failing to disclose the identities of the
5 purported ‘foreign citizens’ who have an ownership of the NCSLT Trusts, the Defendants’ cannot
6 meet their burden to show the removal of this action falls within this Court’s limited jurisdiction.
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8 Also, as explained in the accompanying memorandum there is pending litigation as to
9 who has authority to manage the NCSLT Trusts. *In re Nat’l Collegiate Student Loan Trusts*
10 *Litig.*, No. CV 12111-VCS, 2020 WL 5049402, at *1-3 (Del. Ch. Aug. 27, 2020)(“The key
11 constituents of [the Trusts] cannot agree on how the [T]rusts should be governed or how they
12 should operate...[and has] “left the Trusts in a state of near paralysis....[where] [t]hird parties
13 interacting with the Trusts cannot determine who actually speaks for the Trusts and who has
14 authority to bind the Trusts”). In light of the issues concerning the management of the NCSLT
15 Trusts, it is unclear whether counsel in this action is truly authorized to act on behalf of the
16 NCSLT Trust Defendants. If counsel were not properly authorized to act on behalf of the
17 Trusts at the time of removal, removal was improper.
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19 Based on the foregoing this case should be remanded to the state court.

20 In the alternative, if the Court believes Defendants’ Notice of Removal is not defective
21 on its face as to whether CAFA jurisdiction exists and the Defendants properly consented to
22 removal by persons actually authorized to make that decision and the time to properly amend it
23 has not passed, Brown challenges the assertions made by Defendants for CAFA jurisdiction
24 and seeks by separate motion file contemporaneously with this motion, for leave to conduct
25 limited jurisdictional discovery to obtain evidence to support or decline the Court’s CAFA
26 jurisdiction pursuant to *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 88

1 (2014).

2 Based on this alternative relief, Plaintiff requests leave to supplement this motion if
3 necessary and/or appropriate.

4 Respectfully submitted this September 21, 2020.

5 HENRY & DEGRAAFF, P.S.

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